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EXHIBIT B

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC, etc., et al., Plaintiffs,	)	
v.	)	Case No. 05-03639 JW
GOOGLE, INC., Defendant.	)	

DEPOSITION OF HOWARD STERN

August 16, 2006

227871

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

------------------------------------x

CLRB HANSON INDUSTRIES, LLC d/b/a INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE, INC.,

Defendant.

Case No. 05-03639 JW

------------------------------------x

August 16, 2006

11:19 a.m.

VIDEOTAPED DEPOSITION of HOWARD STERN, taken by Defendant, pursuant to notice, held at the offices of Thacher Proffitt & Wood, 2 World Financial Center, New York, New York, before Amy E. Sikora, CRR, CSR, RPR, Certified Realtime Reporter, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public within and for the State of New York.

A P P E A R A N C E S:

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M. CHRISTOPHER JHANG, ESQ.

ALSO PRESENT:

THOMAS DELVECCHIO, Videographer

11:34 Q. You're going to follow the instruction; right?
11:34 A. Yes.
11:34 Q. All right. Okay. Let's see. Okay.
11:34 And no deposition testimony. Trial testimony?
11:34 A. No.
11:34 Q. Okay. And the business that you were advertising on the Google AdWords account, what was that business?
11:34 A. It was called homeworksolver.net.
11:35 Q. Okay. What's that?
11:35 A. It assists people with their homework problems.
11:35 Q. Okay. And that's a business you run out of your home?
11:35 A. A sideline business, yes.
11:35 Q. Okay. And anybody else involved in that business?
11:35 A. No.
11:35 Q. Okay. And you use the Google AdWords program to advertise for that; right?

13:01 A. Yes. That's the percent the
13:01 cost exceeded the daily budget.
13:01 Q. Okay. And these campaigns --
13:01 did the campaign run every day?
13:01 A. No.
13:01 Q. Okay. You had paused your
13:01 campaign; is that correct?
13:01 A. Yes.
13:01 Q. And how often do you pause your
13:01 campaign?
13:01 A. I pause it every day that I have
13:01 it running, and I may keep it paused until I
13:01 restart the campaign.
13:01 Q. And why do you pause the
13:02 campaign?
13:02 A. To prevent the ads from
13:02 appearing.
13:02 Q. And is there any particular
13:02 reason why you pause it on certain days
13:02 versus others?
13:02 A. I pause it on the weekends
13:02 because I don't think people are going to be
13:02 responding, and I'm not available to work on
13:02 these problems on the weekends.

Q. Any other times?

A. No.

Q. So typically you just pause it on the weekends, is that fair to say?

A. Most of the time I pause them on the weekends. I might pause it, if I'm going to be out of my home on vacation.

Q. Any other reasons?

A. I can't think of other reasons right now, but there may be other reasons.

Q. And the amount of the -- that you reflect as cost, is that taken from the AdWords program which has an entry that defines cost?

A. Probably the field that's the daily cost.

Q. Okay. And have you made any effort to see whether the cost that appears on the -- under the entry described as "Cost" in the AdWords program corresponds to the charges against your credit card?

A. I've made an attempt, but it's complicated, because I get billed on a day that's not the end of the month. So the June

A. I don't recall with any certainty that I recall an e-mail confirmation. I mean, I can't say for a fact that I do or not. I know that I get something from my e-mail provider, and I don't want to confuse the two.

In other words, every month I get a statement saying, you know, your ISP is charging you whatever. I don't think I get that from Google. I think it just shows up on my credit card.

Q. Oh, and by the way, just an aside. Have you ever used anyone to help optimize your advertising campaign?

A. No. None whatsoever. No.

Q. And going back to this e-mail, on 9 October 2003, you wrote to Google and said, "I have a $10-a-day budget, but on 10/8/03 the cost was over 15. I thought the listings would go off line once the budget was reached. What happened?"

Do you see that?

A. Yes, I do.

Q. And then the response came on

10 October 2003. And you were told by Google that, among other things, that "As traffic is never constant from day to day, it is possible that you may accrue charges above or below your set limit."

Do you see that?

A. Yes.

Q. And that "Our system makes sure that in a given billing period, you are never charged more than the number of days in that month multiplied by your daily budget. That amount equals your monthly budget."

Do you see that?

A. Yes.

Q. "For clicks accrued over your daily budget, you will see an overdelivery credit on the billing summary page under 'My Account' tab. This credit will appear at the end of your billing period."

Is that correct?

A. I see that, yes.

Q. And your best recollection is, you've looked on the billing summary page under the "My Account" tab and have not seen overdelivery credits?

A. Yes.

Q. And after you were told by Google that you could accrues charges above or below your set limit, you continued to use the Google program; correct?

A. Yes, I continued to use it. It's being used possibly today, yes.

Q. Okay. And it is correct to say that you understood, certainly as of 10 October 2003, that you could accrue charges above or below your set limit?

A. I never thought that I would be billed for them. Accruing and being charged for them are two different things. I saw that I was accruing charges over my daily budget. I never thought that I would be billed for those, especially since I never received any overdelivery credits. I was both accruing and being charged for more than my daily budgets every single -- many times.

Q. Okay. And then, with respect to the -- and, in fact, on October 21, which was 11 days after you received this

H. Stern

Q. There's -- if you go to the second page under that tab 2 at the bottom, where you wrote to Google on Wednesday, October 22, 2003. Do you see that down at the bottom?

A. Yes, I do.

Q. And you state that, "My understanding of a daily budget is very simple. Daily costs not to exceed $10. I don't expect to pay more on some days to compensate for days that it costs less than $10. I'm not trying to meet a monthly target, rather, a daily target," et cetera.

Do you see that?

A. Yes, I do.

Q. Okay. And then -- I want to make sure I've got this in chronological order. Then on 10/22/03, I believe, you're going to have to help me sort this out, somebody wrote, "Hello Howard. Bradley."

Do you see that?

A. Yeah, yeah, I see that, yes.

Q. Now, is that a response to -- do you understand that to be a response to your

14:48 e-mail or is that one that prompted your e-mail, if you look at it?

14:49 A. I'd like to -- I'd like to think it's a response, but I can't say for sure. Because he's disagreeing with my -- with the billing system, and that's what I'd just done in my e-mail. I wouldn't have, you know, written him something after he's told me I disagree with it.

14:49 Q. Okay. Fair enough. So in other words -- okay. And he states, he, Bradley, states in the middle of this e-mail, "In general, we try to keep your daily cost fluctuation to no more than 20 percent above your daily budget."

14:49 Do you see that reference?

14:49 A. Wait, wait. What page are you on?

14:49 Q. Pardon me.

14:49 A. Are you on the first page?

14:49 Q. No. I'm on page 3 of 12.

14:49 A. Oh, okay. Yeah, I see that. Right.

14:50 Q. "We try to keep your daily costs

CERTIFICATE

STATE OF NEW YORK)

:ss

COUNTY OF NEW YORK)

I, AMY E. SIKORA, CRR, CSR, RPR, a Certified Realtime Reporter, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify that the foregoing deposition of HOWARD STERN was taken before me on the 16th day of August, 2006;

That the said witness was duly sworn before the commencement of the testimony; that the said testimony was taken stenographically by me and then transcribed.

I further certify that I am not related by blood or marriage to any of the parties to this action nor interested directly or indirectly in the matter in controversy; nor am I in the employ of any of the counsel in this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of August, 2006.

Amy Sikora

AMY E. SIKORA